BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2019-224-E
DOCKET NO. 2019-225-E

In the Matter of: South Carolina Energy Freedom Act (House Bill 3659) Proceeding Related to S.C. Code Ann. Section 58-37-40 and Integrated Resource Plans for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC	**DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC'S OBJECTION AND MOTION TO STRIKE AND REQUEST FOR EXPEDITED CONSIDERATION**

Pursuant to S.C. Code Ann. Regs. 103-829(A) and 103-846 and South Carolina Rule of Evidence ("SCRE") 103, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively the "Companies") hereby move the Public Service Commission of South Carolina ("Commission") for an order striking the following pre-filed surrebuttal testimony and exhibits filed in the above-captioned dockets on April 15, 2021:

(1) Surrebuttal Testimony of Rachel Wilson, witness for Natural Resources Defense Council, Sierra Club, Southern Alliance for Clean Energy, South Carolina Coastal Conservation League, and Upstate Forever (together, the "Environmental Parties") and Carolina Clean Energy Business Association[1] ("CCEBA");

   (a) All testimony;

   (b) Exhibit RSW-1 (Summary of Professional Experience); and

   (c) Exhibit RSW-2 (Synapse Proposed Alternative Resource Plan, Corrected Version dated March 19, 2021) ("Synapse Alternative Plan").

(2) Surrebuttal Testimony of Kevin Lucas, witness for CCEBA;

   (a) Page 2, line 17 through page 3, line 2 (Introducing Synapse Alternative Plan and relying on its findings and conclusions);

[1] On March 10, 2021, the Commission granted SCSBA's motion to be renamed in these and other dockets as Carolinas Clean Energy Business Association ("CCEBA"). For consistency with previously filed documents, this brief will refer to SCSBA as CCEBA.

(b) Page 14, line 2 through page 21, line 15 (Section III, in its entirety, discussing Synapse Alternative Plan and advocating Commission rely on its analysis, findings and conclusions);

(c) Page 47, lines 14 through 19 (advocating Commission adopt Synapse Alternative Plan);

(d) Page 51, lines 14 through 16 (advocating Commission rely upon battery storage cost assumptions from Synapse Alternative Plan);

(e) Page 53, lines 7 through 9 (advocating Commission rely upon Synapse Alternative Plan); and

(f) Page 54, line 9 through page 55, line 6 (advocating the Commission require Duke to rely on Synapse Alternative Plan assumptions and to develop an alternative modeling scenario that relies upon Ms. Wilson's recommendations and assumptions presented in the Synapse Alternative Plan.

(g) Exhibit KL-S-1 (Synapse Alternative Plan); and

(h) Exhibit KL-S-3 (Proposed solar and storage addition recommendations developed using Synapse Alternative Plan).

(3) Surrebuttal Testimony of John D. Wilson, witness for the Environmental Parties;

(a) All testimony;

(b) Exhibit JDW-1 (Summary of Professional Experience);

(c) Exhibit JDW-2 (Report on Implementing All-Source Procurement in the Carolinas, dated February 26, 2021); and

(d) Exhibit JDW-3 (Report on Making the Most of the Power Plant Market: Best Practices for All-Source Electric Generation Procurement) (together with JDW-2, the "All-Source Procurement Reports").

(4) Surrebuttal Testimony of Tyler Fitch, witness for Vote Solar;

(a) Page 9, lines 13 through 19 (describing Synapse Alternative Plan report and advocating the Commission rely upon its modeling and conclusions).

(5) Surrebuttal Testimony of Jim Grevatt, witness for the Environmental Parties;

(a) Page 16, line 1 through 2 (quoting information or data from Exhibit JG-5 as evidence); and

(b) Exhibit JG-5 (82 pages of Corrected Direct Testimony of Shawn M. White and 3 exhibits—totaling 250 pages—as prefiled with the Public Service Commission of Colorado on July 3, 2017).

As further described in this Motion, the Commission should strike this testimony and exhibits because *(i)* Environmental Parties and CCEBA have intentionally and improperly exceeded the lawful scope of surrebuttal—which is limited to responding to "new matters" raised in the Companies' rebuttal; *(ii)* there is no opportunity to conduct discovery on the Synapse Alternative Plan and All-Source Procurement Reports or the testimony advocating the Commission rely upon their findings and conclusions, as expressly and unambiguously provided for in Act 62; and *(iii)* Environmental Parties and CCEBA seek for the Commission to unlawfully rely upon this improperly presented new testimony as well as testimony that is clearly hearsay in carrying out its responsibilities under Act 62. The Companies assert their belief that allowing this testimony and exhibits into evidence in this 2020 IRP proceeding would constitute clear grounds for appeal because fair and impartial procedures were not used and no opportunity for discovery was afforded as required under Act 62.

To the extent the Commission is inclined to hear from these Witnesses or to consider the Synapse Alternative Plan or All-Source Procurement Reports as alternative planning recommendations in the future, Act 62 prescribes for the Commission's continuing review of the Companies' IRPs and the Companies are planning to file their next comprehensive IRPs in September 2022. Environmental Parties and CCEBA would have the opportunity to intervene and timely refile these materials in that next IRP proceeding under the procedural schedule established by the Commission at that time to inform the Companies future resource plans.

Given the severe prejudice to the Companies raised in this Motion, the Companies seek expedited consideration of this Motion and a Commission ruling prior to the hearing date.[2] It is critical to the Companies' rights to due process and a fair proceeding that the Commission—as the fact-finder responsible for implementing Act 62—be protected from considering evidence that would be improperly admitted into the record and which may impact the Commission's decision-making. *See* Rule 103(c), SCRCP. For that reason, the Companies respectfully request a decision from the Commission or from the presiding hearing officer, pursuant to S.C. Code Ann. Regs. 103-846(B), on this Motion prior to the merits hearing in this case.

The Companies are prepared to be heard on these matters at the Commission's earliest convenience.

In support thereof, the Companies would respectfully show the following:

I. INTRODUCTION AND BACKGROUND

On April 15, 2021, over seven months after the Companies filed their 2020 integrated resource plans (the "2020 IRPs") with the Commission and just twelve calendar days before the scheduled start of the evidentiary hearing to review the Companies' IRPs under Act 62, the Environmental Parties and CCEBA submitted extensive surrebuttal testimony that raises entirely novel issues, including an entirely new alternative recommended resource plan that was not presented in their direct case on February 5, 2021. While these parties' surrebuttal testimony was

[2] S.C. Code Ann. Regs. 103-829(A) provides that motions "will be reduced to writing and filed with the Chief Clerk at least ten (10) days prior to the commencement of a hearing." That regulation also provides that the times provided in the regulation "may be modified by order of the Commission or its designee for good cause." The Company submits that good cause exists in this case to permit it to lodge this written motion with less than ten days prior to the commencement of the hearing due to (1) it was not possible within the existing procedural schedule to file this motion 10 days ahead of time. That means the Companies would have had to have been preparing the Motion even before the testimony was filed; (2) the Companies' expeditiously prepared this Motion for filing only two business days after having received the offending surrebuttal testimony; (3) judicial economy being better served by the Commission and parties receiving this motion in written form now rather than the Companies, alternatively, lodging the motion at the hearing as contemplated by the regulation; and (4) the substantial prejudice to the Companies that would result should the offending material remain part of the record in these proceedings, as explained in more detail herein.

filed in accordance with deadlines set by the scheduling order in these proceedings[3], and 4 of their 6 witnesses properly filed testimony responsive to the Companies' rebuttal, Environmental Parties and CCEBA present two new witnesses that unequivocally and intentionally raise new issues based upon expansive new alternative resource plan analyses and other extensive new reports. This testimony and the underlying Synapse Alternative Plan and All-Source Procurement Reports is highly prejudicial because it violates the limited procedural purpose of surrebuttal and because there is simply no time left for the parties to engage in discovery on these alternative plans or evaluate the reports and new recommendations in any meaningful way. DEC and DEP would be severely prejudiced at this juncture of the proceeding if such testimony and new studies and reports were allowed into evidence as purported surrebuttal and without the benefit of "reasonable discovery," as expressly and unambiguously provided for in Act 62. *See* S.C. Code Ann. § 58-37-40(C)(1). For these reasons, Environmental Parties and CCEBA's tactics also place the Commission in the untenable position of being asked to rely upon an unvetted and unreviewed alternative resource plan that has not been subject to discovery or any meaningful review by the Companies or the Office of Regulatory Staff ("ORS").

The first "new issue" necessitating this Motion is the 30-page report co-authored and sponsored by Ms. Wilson of Synapse Energy Economics, Inc. entitled *Clean, Affordable, and Reliable: A Plan for Duke Energy's Future in the Carolinas* ("Synapse Alternative Plan"). The Synapse Alternative Plan filed as Exhibit RSW-2 is a corrected report dated March 19, 2021. Page 1 of the Synapse Alternative Plan states that "[t]he purpose of this report is to evaluate the 2020 [IRPs] filed in North Carolina" and focuses on the economic consequences to "North Carolina

[3] Pursuant to Order No. 2020-715-E, the Companies filed their direct testimony on November 13, 2020. Other parties, including CCEBA, the Environmental Parties, and Vote Solar, filed direct testimony 85 days later on February 5, 2021. The Companies then filed rebuttal testimony 47 days later on March 19, 2021 responding to testimony filed by the other parties. ORS and intervening parties then filed surrebuttal testimony on April 15, 2021.

ratepayers[.]"[4] The Synapse Alternative Plan, which is relied upon by several of the Advocacy Groups'[5] other witnesses, presents an extreme critique of the Companies' coal retirement study and recommends the Commission adopt an "alternative resource portfolio" based on significant modifications to certain of the Companies' planning and cost assumptions.[6] Neither Ms. Wilson's testimony nor the sponsoring Advocacy Group intervenors provide the Commission with any explanation why this significant alternative resource plan could not have been filed earlier. Because Environmental Parties and CCEBA chose to file this report as part of their surrebuttal testimony and *not* in their direct case on February 5, 2021, the Companies will have no opportunity to conduct discovery on any of the issues or recommendations made in the Synapse Alternative Plan.

CCEBA Witness Lucas and Vote Solar Witness Fitch also rely upon the improperly presented Synapse Alternative Plan in surrebuttal to promote arguments they initially advocated for in their direct testimony.

The second "new issue" is the 55-page report entitled *Implementing All-Source Procurement in the Carolinas* and the 62-page report entitled *Making the Most of the Power Plant Market: Best Practices for All-Source Electric Generation Procurement* (together, the "All-Source Procurement Reports"), authored by and attached as Exhibit JDW-2 and JDW-3, respectively, to the surrebuttal testimony of Environmental Parties Witness J. Wilson. The All-Source Procurement Reports present for the first time an alternate approach to the Companies' established procurement process, which is completely unrelated to issues raised to date in these proceedings and the Companies have similarly had no reasonable opportunity to investigate

[4] *See* R. Wilson Surrebuttal, Ex. RSW-2, at 1.
[5] As explained in the Rebuttal Testimony of DEC/DEP Witness Glen Snider, the "Advocacy Groups" include Environmental Parties, CCEBA, and Vote Solar.
[6] R. Wilson Surrebuttal at 3.

through discovery or provide rebuttal testimony to these recommendations before the start of the hearing.

In addition to the untimeliness of the new arguments and improperly-filed new reports, the Companies also move to strike certain testimony and exhibits based upon the long-standing prohibition on hearsay testimony pursuant to Rule 802, SCRE, as discussed further below. Hearsay is inadmissible because the declarant is not present and available for cross-examination, which is essential to procedural fairness. While reliance upon hearsay is permissible as to experts offering their own opinions, this limited exception "does not sanction the simple transmission of hearsay; it only permits an expert opinion based on hearsay." *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 299, 529 S.E.2d 45, 53 (Ct. App. 2000) (citing *United States v. Tomasian*, 784 F.2d 782, 786 (7th Cir.1986). These binding evidentiary principles were disregarded in surrebuttal testimony filed by Mr. Grevatt, and the offending material should be stricken rather than received into evidence.

II. ARGUMENT

A. Surrebuttal Testimony That Raises New Issues and Which is Not Limited to Responding to Issues Raised in Rebuttal Testimony Must Be Stricken.

Surrebuttal testimony must be limited to replying to **new matters** raised in rebuttal testimony. *See State v. Watson*, 353 S.C. 620, 623-24, 579 S.E.2d 148, 150 (Ct. App. 2003) ("Surrebuttal is appropriate when, in the judge's discretion, new matter or new facts are injected for the first time in rebuttal"); *U.S. v. Barnette*, 211 F.3d 803, 821 (4th Cir. 2000) ("Surrebuttal evidence is admissible to respond to any *new matter* brought up on rebuttal.") (emphasis added); *State v. Farrow*, 332 S.C. 190, 194 (S.C. App., 1998) ("We thus hold the reply testimony . . . was improper because it was not presented to rebut evidence adduced by Farrow.") (citing *Daniel v. Tower Trucking Co.*, 205 S.C. 333, 32 S.E.2d 5 (1944)).

The policy reason underlying the long-standing requirement that surrebuttal testimony only be offered in response to new matter raised in rebuttal testimony is that it would be fundamentally unfair for a party to raise an issue for the first time in surrebuttal testimony without the party with the burden of proof, in this case the Companies, being given a corresponding opportunity to introduce responsive evidence. The lack of an opportunity to introduce responsive evidence to this new discussion in surrebuttal testimony violates the Companies' due process rights. *See Dangerfield v. State*, 376 S.C. 176, 179, 656 S.E.2d 352, 354 (2008) ("The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected . . . the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review.").

Because the very filing of surrebuttal testimony "is discretionary with the Commission[,]" *see* Order No. 2020-431 at 3-4, Docket No. 2019-281-S (July 6, 2020), and because utilities must be given a "meaningful opportunity" to respond to evidence presented by other parties, *Utils. Serv. of S.C., Inc. v. S.C. Office of Regulatory Staff,* 392 S.C. 96, 107, 708 S.E.2d 755, 761 (2011), parties should be extremely circumspect in presenting surrebuttal— and the Commission should ensure the parties appropriately limit surrebuttal, if it is allowed at all— to "new matters" raised in rebuttal testimony. *See State v. Watson,* 353 S.C. 620, 623-24, 579 S.E.2d 148, 150 (Ct. App. 2003); *U.S. v. Barnette*, 211 F.3d 803, 821 (4th Cir. 2000) ("Surrebuttal evidence is admissible to respond to any new matter brought up on rebuttal."); *State v. Farrow*, 332 S.C. 190, 194 (S.C. App., 1998); *Daniel v. Tower Trucking Co.*, 205 S.C. 333, 32 S.E.2d 5 (1944). Indeed, the Commission has recently declined to permit parties to file surrebuttal testimony, noting that "parties will have the full right to cross-examine all witnesses who are allowed to testify" at the hearing. Order No. 2020-431 at 3-4, Docket No. 2019-281-S (July 6, 2020).

For all of the foregoing reasons, it is clear that surrebuttal testimony is **solely** for the purpose of responding to new matters raised in rebuttal testimony, and that testimony and/or exhibits proffered in surrebuttal testimony that is not directly responsive to rebuttal testimony should be stricken.

B. Allowing New Testimony and Alternative Planning Recommendations in Surrebuttal Would Also Violate the Procedural Requirements of Act 62.

Environmental Parties and CCEBA's intentional tactic of improperly filing these alternative plans and recommendations only days before the hearing places the Companies and other parties at a significant disadvantage in preparing for and participating in the upcoming evidentiary hearing. This tactic also impedes the Commission in discharging its duty under Act 62 to vet these alternative planning recommendations and in making its determination as to whether the Companies' proposed IRPs "represent the most reasonable and prudent means of meeting the electrical utility's energy and capacity needs[.]" S.C. Code Ann. § 58-37-40(C)(1)-(2).

The well-established procedural prohibition on parties raising new issues in surrebuttal testimony is fully consistent with Act 62's mandate that the Commission must "*shall establish a procedural schedule to permit reasonable discovery* after an integrated resource plan is filed in order to to assist parties in obtaining evidence concerning the integrated resource plan, including the reasonableness and prudence of the plan *and alternatives to the plain raised by intervening parties*[.]" S.C. Code Ann. § 58-37-40(C)(1) (emphasis added). In other words, the General Assembly directed the Commission to establish a procedural schedule that would allow parties time for discovery and, importantly, would allow the Commission to meet its statutorily-prescribed obligation to issue an order on the Companies' 2020 IRPs no later than 300 days after filing. *Id.* There can be no credible argument that Environmental Parties and CCEBA could not have timely filed this testimony and these reports as part of their direct case, as Commission Order No. 2020-

715 established the procedural schedule and set the hearing date for these proceedings on October 21, 2020—over 105 days prior to the date these Advocacy Groups filed their direct cases. To file this significant new testimony and alternative planning recommendations based on unverified reports flies in the face of the clear mandate to establish as procedural schedule that would allow the Commission time to fully vet the IRPs and meeting its obligations under Act 62.

Environmental Parties' and CCEBA's tactic of filing this significant new testimony and exhibits in surrebuttal also violates Act 62's provision for "reasonable discovery" in IRP proceedings. The General Assembly in enacting the robust procedural requirements of the new Section 58-37-40 clearly viewed reasonable discovery as a necessary component of IRP proceedings to assist *all* parties and the Commission in evaluating utilities' IRPs *as well as* the alternative recommendations proposed by intervenors. *See* S.C. Code Ann. 58-37-40(C)(1). Where, as here, there are only 12 calendar days between the filing of surrebuttal testimony and commencement of the hearing, there is insufficient time for the Companies to conduct any meaningful discovery—much less "reasonable" discovery—on any newly raised issues, thus depriving the parties and the Commission the opportunity to fully vet the alternative recommendations proposed by intervenors in surrebuttal testimony as required under Act 62.

i. *The Synapse Alternative Plan, and all testimony that incorporates or relies upon it, should be stricken.*

The stated purpose of the Synapse Alternative Plan is to "present an alternative, optimized resource portfolio for the state [of North Carolina]."[7] In particular, the Synapse Alternative Plan advocates that the Companies should retire their coal-fired units at the earliest practicable retirement dates *without*, as the Companies propose, keeping any units online beyond 2035. This conclusion was purportedly reached through use of "state-of-the-art electric simulation software

[7] R. Wilson Surrebuttal, Ex. RSW-2, at 1.

to compare the relative cost to ratepayers of continuing Duke's investments in existing and new fossil-fueled resources versus a scenario that replaces Duke's coal fleet with a portfolio of renewables, storage and energy efficiency[.]"[8] The Synapse Alternative Plan then presents "an alternative, optimized resource portfolio" based upon modified inputs and assumptions. It is thus axiomatic that the Synapse Alternative Plan should have been proffered earlier in the proceeding, as part of CCEBA's and the Environmental Parties' case-in-chief—*i.e.,* in their direct testimony filed on February 5, 2021. *Daniel v. Tower Trucking Co.*, 32 S.E.2d 5, 10 (S.C., 1944) (a party may offer rebuttal testimony "provided it is in the nature of true reply and not such as should have been offered in the case in chief").

While Ms. Wilson claims that her surrebuttal testimony and Synapse Alternative Plan "respond" to the rebuttal testimony of DEC/DEP Witness Glen Snider, no part of her testimony directly engages with Mr. Snider's rebuttal testimony only nominally referring to the substance of his testimony. As an initial matter, this assertion is dubious at best as the Synapse Alternative Plan was completed *before* the Companies even filed their rebuttal testimony. Moreover, two of the three primary sections to her testimony—Section IV "Synapse Modeling Methodology" and Section V "Results of Synapse Modeling Analysis"—are clearly direct testimony and entirely devoted to discussing the Synapse Alternative Plan, its conclusions, and the recommendation for the Commission to require the Companies to adopt an "alternate resource portfolio" that was not introduced in either the Environmental Parties' or CCEBA's direct testimony.[9] The third primary section—"Critique of Duke's Coal Retirement Analysis"—attempts to highlight purported flaws in the Companies' methodology for economic analysis of coal retirements *presented in the Companies' initial IRP filing* and *not* on any novel argument or new explanation given in Mr.

[8] *Id.*
[9] R. Wilson Surrebuttal, at 11-22.

Snider's rebuttal testimony.[10] While each section contains one or more passing reference to Mr. Snider's rebuttal testimony—likely included as an attempt to preempt the issues raised in this motion—nowhere does Ms. Wilson identify what, if any, specific data or other information from Mr. Snider's rebuttal testimony was necessary to run the modeling that she and her colleagues performed and relied upon in the Synapse Alternative Plan.

It is inconceivable how Ms. Wilson's purported surrebuttal presenting the Synapse Alternative Plan could be fairly characterized as responsive to the Companies' rebuttal testimony. It is beyond dispute that the original Synapse Alternative Plan was completed in February 2021, followed by the "Corrected" version that is attached to Ms. Wilson's testimony dated March 19, 2021. Environmental Parties and CCEBA either purposefully chose not to submit this Report as part of their direct testimony on February 5, 2021 or perhaps could not do so because the Synapse Alternative Plan was not yet complete. If the Environmental Parties and CCEBA wanted to use this analysis in the instant dockets, such analysis should have been conducted based on the procedural schedule set by this Commission months ago, as required by Act 62. The decision to delay filing the Synapse Alternative Plan in the instant proceeding, introducing such significant issues and conclusions for the first time in surrebuttal testimony, unfairly deprives the Companies of the opportunity to respond and prejudicially influences the decision-making of the Commission contrary to the express mandate of Act 62. And, for these reasons, the approach is plainly unlawful.

This is also not the first time that the Sierra Club has attempted to improperly inject new evidence from Synapse at the eleventh hour of a regulatory proceeding. In October 2019, Ms. Wilson pre-filed another Synapse expert report and testimony on behalf of Sierra Club in a

[10] *Id.* at 6.

proceeding before the Mississippi Public Service Commission after the date that the Mississippi Commission had provided for pre-filing of testimony. Mississippi Power Company motioned the Mississippi Commission to strike Ms. Wilson's testimony and expert report due to the severe prejudice of proceeding to hearing without the benefit of discovery. The Mississippi PSC granted the motion, finding that "Sierra Club's lack of prompt engagement in this proceeding should not delay the Commission's timely resolution of this matter[.]" *Order Approving Petition for Facility Certificate*, at 5 Miss. P.S.C. Docket No. 2019-UA-116 (Oct. 28, 2019) (Striking Ms. Wilson's testimony and Synapse expert report in full).

Environmental Parties and CCEBA have also provided no explanation—nor is there any rational explanation that the Companies can discern—as to why these parties elected not to either timely file these reports with the Commission as part of their direct testimony or contact the Companies and other parties and request leave of the Commission to provide supplemental direct testimony when these reports were clearly available to be filed with this Commission as of the time they were initially completed in February/March 2021.

Because South Carolina caselaw forbids the introduction of new issues in surrebuttal testimony, and consistent with Act 62's goal of ensuring that *both* the Companies' and intervenor's proposed IRPs are appropriately vetted, the Companies ask the Commission to strike the testimony and exhibits referenced above, each of which incorporates and/or relies upon the Synapse Alternative Plan.

ii. *The All-Source Procurement Reports, and all testimony that incorporates or relies upon it, should be stricken.*

Like the Synapse Alternative Plan, the All-Source Procurement Reports and Mr. John Wilson's corresponding testimony improperly raises new issues in surrebuttal that do not directly respond to any new matters or issues presented in the Companies' rebuttal testimony. Instead, Mr.

Wilson recommends that the Commission require the Companies to fundamentally reshape their resource planning and generation procurement functions and to adopt a new all-source procurement model to procure new capacity resources to meet the Companies' identified future capacity needs.[11] Mr. Wilson specifically recommends that the Companies adopt in these IRP proceedings an all-source procurement model used in other states—Colorado or New Mexico—an approach he describes as a utility's "unified resource acquisition process," which, he contends, will "ensure that a utility arrives at the optimal resource mix, reducing costs and risks to customers."[12] According to Mr. Wilson, all-source procurement requires a fundamental restructuring of the IRP, procurement, and certification regulatory processes to establish a single consolidated process to consider bids to meet the total system need identified in the Companies' IRPs at one time.[13]

While Mr. Wilson's surrebuttal testimony purports to respond to the rebuttal testimony of DEC/DEP witnesses Mr. Snider, Matt Kalemba, and Nick Wintermantel and suggests—without any meaningful explanation—that his new all-source procurement model recommendation could resolve numerous disputed issues between the Companies and intervenors,[14] at its core, the testimony is a completely new argument (and unprecedented attempt) to fundamentally reshape the generation procurement process in South Carolina and is only tangentially related to the Companies' as-filed IRPs and corresponding direct and/or rebuttal testimony. Tellingly, Mr. Wilson does not identify any specific information or data provided in the Companies' rebuttal testimony which prohibited the Environmental Parties from proposing that the Companies adopt an all-source procurement model in their direct case; and, indeed, he could not do so as the All-

[11] J. Wilson Surrebuttal, at 4.
[12] *Id.* at 4-5.
[13] *Id.* at 10-11.
[14] S*ee id.* at 11-13.

Source Procurement Reports are dated February 26, 2021 meaning that—like the Synapse Alternative Plan—they were completed *before* the Companies filed their rebuttal testimony.

Rather than ensuring Mr. Wilson's Reports were prepared in time to file with their direct case in this proceeding or seeking leave to file supplemental direct testimony and to amend the procedural schedule, the Environmental Parties instead have held on to the All-Source Procurement Reports and related recommendations for nearly two months before making these significant arguments in Mr. Wilson's surrebuttal testimony 12 days before the evidentiary hearing commences.

Accordingly, consistent with settled South Carolina law that parties may not raise new issues on surrebuttal as well as Act 62's directive to ensure full vetting of alternative recommendations to inform the Commission's review of the Companies' IRPs, the Company respectfully requests that the Commission strike Mr. Wilson's testimony in its entirety, including exhibits JDW-1, JDW-2 and JDW-3.

III. CONCLUSION

Wherefore, having fully set forth its motion, the Companies respectfully request that the Commission grant their Motion prior to the April 26, 2021 hearing such that the offending material is not admitted into evidence and heard by the Commission, as such would be highly prejudicial, and grant such other and further relief as the Commission deems just and lawful.

Respectfully submitted this 19th day of April, 2021.

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